

**UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF TENNESSEE
NASHVILLE DIVISION**

In Re:)	
)	
AREDIA® AND ZOMETA® PRODUCTS)	
LIABILITY LITIGATION)	
)	
(MDL No. 1760))	No. 3:06-MD-1760
)	Judge Campbell/Brown
)	
This Document Relates to:)	
3:08-CV-00928 (<i>Casali</i>))	

ORDER

Plaintiff, Gian Casali (Mr. Casali) has filed an unopposed motion to substitute for the purpose of clarifying the record. (MDL Doc. 6966; Related Case 41) Specifically, Mr. Casali seeks an order substituting him as plaintiff for his late wife, Angelina Casali (Ms. Casali), who died on January 24, 2006 because, in counsel's words, "it is unclear whether a Motion to Substitute has been filed or granted." Plaintiff has provided a copy of an order entered by the Surrogate's Court for Suffolk County, New York that granted him letters of administration on November 28, 2006. (MDL Doc. 6966-1; Related Case 41)

The record shows that prior counsel filed a suggestion of death and a motion to substitute in the original case, *i.e.*, case no. 3:05-00719, on November 26 and December 10, 2007 respectively, but not in the lead case, *i.e.*, 3:06-MD-1760. (Case No. 3:05-00719, Doc. 71, 73) The Clerk advised counsel on December 12, 2007 to re-file these documents in the lead case. The Clerk's instruction appears in case no. 3:05-00719, but not on the docket in the lead case.

The record shows further that, less than two weeks later, case no.3:05-00719 was terminated on December 26, 2007 and assigned civil case no. 3:07-01280. Although the original suggestion of death filed in case no. 3:05-00719 appears on the docket in case no. 3:07-01280, the motion to substitute does not, nor do the Clerk's instructions to counsel to re-file the suggestion of death and

motion to substitute.

On August 5, 2008, case no. 3:07-01280 was transferred to the United States District Court for the Eastern District of New York. Thereafter, case no. 3:07-01280 was transferred back to the United States District Court for the Middle District of Tennessee on November 4, 2008 and assigned case no. 3:08-00928. Once again, although the original suggestion of death appears in case no. 3:08-00928, the motion to substitute does not, nor do the Clerk's instructions to counsel to refile.

It does not appear from the record that prior counsel ever re-filed the suggestion of death and motion for substitution in the lead case. However, it is equally apparent from the record that the Clerk's instruction did not appear in any of the subsequent incarnations of this case over the years, nor was the instruction reflected on the docket in the lead case. Counsel's failure to comply with the Clerk's instructions under these circumstances amounts to excusable neglect. Moreover, plaintiff has provided proof that he has held letters of administration for his late wife's estate since November 2006, and that substantial discovery has been completed in this case. Finally, as already noted, NPC does not object. For all of these reasons, plaintiff's motion to substitute (MDL Doc. 6966; Related Case 41) is **GRANTED**.

It is so **ORDERED**.

ENTERED this 10th Day of October, 2013.

/s/Joe B. Brown
Joe B. Brown
United States Magistrate Judge